

United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

April 5, 2016

The Honorable Arthur A. Elkins, Jr.
Inspector General
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Inspector General Elkins:

We write to request the U.S. Environmental Protection Agency's (EPA) Office of Inspector General (OIG) audit and investigate the activities and expenditures relating to the \$3 million cooperative agreement between EPA and the Northwest Indian Fisheries Commission.¹ We are troubled to learn that EPA's financial assistance appears to improperly fund an advocacy campaign in Washington state that unfairly targets and demonizes farmers and ranchers. According to a recent news report, the EPA-funded advocacy campaign includes multiple billboards, bus placards, and an interactive website urging the public to contact state lawmakers.² The website assists the public in contacting lawmakers by providing a pre-written email criticizing the actions of agricultural producers and blaming them for polluting local waterways. Further, the billboards and placards do not cite EPA as a funding source of the campaign. According to an EPA Region 10 official, the failure to attribute EPA as the source of the funding "looks like a violation."³

As you may be aware, the Committee on Environment and Public Works (EPW) is conducting oversight of the controversial and legally suspect rulemaking by EPA and the U.S. Army Corps of Engineers as they define "Waters of the United States" (WOTUS) under the Clean Water Act. The EPW Committee is also investigating EPA's use of social media to promote the rule. In an effort to provide a thorough examination of WOTUS, the Committee on Agriculture, Nutrition, and Forestry has also scrutinized the WOTUS rulemaking process. Such scrutiny has proven to be necessary because the tactics employed by EPA throughout its rulemaking process completely undermined the integrity of the inter-agency review process and the public's trust. On December 14, 2015, the Government Accountability Office (GAO) issued a legal decision that was

¹ See, <http://blogs.nwifc.org/psp/files/2009/01/PA-00J32201-0.pdf>.

² "EPA: Anti-farmer billboard violate agency rules," by Don Jenkins, Capital Press, April 1, 2016; available at: <http://www.capitalpress.com/Washington/20160401/epa-anti-farmer-billboards-violate-agency-rules>.

³ *Id.*

requested by the EPW Committee regarding EPA's use of social media to promote the WOTUS rulemaking. GAO found, among other things, that EPA violated congressional restrictions on grassroots lobbying when it linked to environmental activists' websites that encouraged the public to write to Congress to oppose legislation that would have halted the WOTUS rulemaking.

It appears a large portion of EPA's financial assistance to the Northwest Indian Fisheries Commission is being funneled to pay a public relations and lobbying firm, Strategies 360, to conduct an advocacy campaign called "*What's Upstream?*" in partnership with several environmental activists, including Puget Soundkeeper Alliance and Western Environmental Law Center.⁴ The campaign features billboards and placards with the statement, "*Unregulated agriculture is putting our waterways at risk,*" and a link to the campaign's website. The billboards and placards do not identify EPA as the source of any funding, or the role played by the grant recipient, Northwest Indian Fisheries Commission. This is important information and the lack of transparency by the campaign and EPA is disconcerting. In particular, displayed prominently at the top of the campaign webpage is a link to "*Take Action!*" allowing users to send a pre-written email to their state representatives concerning the need for increased regulation of the agriculture industry. The bottom of the campaign's main webpage states the campaign's goal, "is to inform the public about the leading causes of water pollution and how pollution affects the health of Washington's waterways, people and fish. This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement PA-00J32201." Peculiarly, the statement also includes a disclaimer that the website does not necessarily reflect the views or policies of the EPA. However, EPA's past actions speak for themselves, and it is not friendly to our farmers and ranchers.

Recipients of federal grants agree to spend the federal money on costs allowed under federal law and Office of Management cost principles, which prohibit, among other things, spending federal money on lobbying and political activities at the federal, state, and local level.⁵ The Antilobbying Act also imposes criminal penalties for improperly using federal appropriations to "influence in any manner ... an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation."⁶ The fact that the Northwest Indian Fisheries Commission campaign website, fully or partially funded by the EPA, enables the public to use a script criticizing

⁴ *Id.* See also, <http://whatsupstream.com/>.

⁵ See, OMB Circular A-21, "Cost Principles for Education Institutions"; OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments"; Circular A-122, "Cost Principles for Non-Profit Organizations."

⁶ 18 U.S.C § 1913.

agricultural producers in an effort to influence lawmakers deserves immediate legal scrutiny.

As GAO determined, EPA has already been found to have engaged in prohibited grassroots lobbying and covert propaganda to generate public support for its WOTUS rule, and the rule will have dire impacts on farmers if allowed to stand. This Northwest Indian Fisheries Commission grant appears to be part of a broader war on farmers and rural communities that the Obama Administration, through the EPA, has been waging in concert with its allies in the environmental activist community. It is imperative we learn whether EPA officials are turning a blind eye to this deceptive wrongdoing, and why the administration did not perform the necessary oversight to confirm taxpayer dollars are not mismanaged, and ensure well-established and important federal restrictions against lobbying are being followed.

Accordingly, we request that OIG investigate and audit this EPA cooperative agreement and grant to the Northwest Indian Fisheries Commission to determine:

1. Whether EPA has followed applicable laws, regulations, and policies in awarding this cooperative agreement/grant to the Northwest Indian Fisheries Commission;
2. Whether EPA has followed applicable laws, regulations, and policies in performing required oversight of this cooperative agreement/grant awarded to the Northwest Indian Fisheries Commission, including receiving copies of any required reports or work products. Please include a summary of any material weaknesses or lack of institutional controls that contributed to any such lack of oversight;
3. Whether the Northwest Indian Fisheries Commission (and any subgrantees) has followed applicable laws, regulations, and policies in performing and implementing this cooperative agreement/grant award;
4. Whether any of the costs or expenses associated with the cooperative agreement/grant to Northwest Indian Fisheries Commission are unallowed, including those associated with the "What's Upstream" advocacy campaign. For any such unallowed costs, please provide a detailed summary and whether any such costs have been recovered; and
5. Whether EPA has had any communication with the Northwest Indian Fisheries Commission and/or Strategies 360 regarding the "What's Upstream" advocacy campaign.

The Honorable Arthur A. Elkins, Jr.

April 5, 2016

Page 4

Thank you for your attention to this request. Please contact Byron Brown of the EPW Committee majority staff at 202-224-6176, or Andrew Rezendes of the Agriculture Committee majority staff at 202-224-2035 if you have any questions.

Sincerely,



James M. Inhofe,
Chairman,
Committee on Environment
and Public Works



Pat Roberts,
Chairman,
Committee on Agriculture,
Nutrition, and Forestry

CC: The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency